IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1132 OF 2002

Mohd.Salim Kayum Ansari. ..Appellant.

V/s.

The State of Maharashtra. ..Respondent.

WITH

CRIMINAL APPEAL NO.1134 OF 2002

Pappukumar Santlal Singh. ..Appellant.

V/s.

The State of Maharashtra. ..Respondent.

Mr.Y.S.Shinde, APP for Respondent-State.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 16, 2006.

ORAL JUDGMENT :

1. These appeals are directed against the Judgment and Order passed by the 3rd Adhoc Additional Sessions Judge, Nashik dated March 16, 2002 in Sessions Case No.144 of 2001. By this decision trial Court convicted the Accused Nos. 1 to 4 for offence punishable under section 328 r/w 34 of the I.P.Code and ordered to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/-each i.d. to suffer further R.I. for four months. By the said order accused Nos. 1 to 4 are also convicted for

offence punishable under section 379 r/w 34 of the I.P.Code and ordered to suffer Rigorous Imprisonment for a period of two years each. Substantive sentences are directed to run concurrently. In the Judgment it is also recorded that the accused persons are in jail since 27th March, 2001. There is nothing on record to indicate that the appellants accused No.3 and 4 have been released on bail at any point of time during the pendency of these appeals. There is also nothing on record to indicate as to whether other accused Nos. 1 and 2 had preferred any appeal before this court or otherwise. Going by the dates indicated in the impugned Judgment, it is amply clear that the period of sentence ordered to be suffered by the trial Court has expired long back. Even in case of default in payment of fisne to be committed by the appellants-accused further four months' period, if reckoned have expired in July, 2006 itself. In other words, nothing survives for consideration in these appeals, which are filed through jail.

2. Even if this Court was to examine the matter on merits with the assistance of learned APP, I have gone through the relevant materials on record and I am in agreement that the conclusion reached by the lower Court for recording finding of guilt. Indeed,

the Judgment in question cannot be said to be happily worded. Even so, in my opinion, final conclusion reached by the trial Court regarding finding of guilt against the accused person is appropriate and can be sustained. The Court below has rightly adverted to the evidence of P.W.1, who has identified the accused Nos.1 and 2. Indeed, the P.W.4 has not identified the accused persons in court. Nevertheless, he has deposed about the circumstances indicated in the evidence of the P.W.1. The evidence of P.W.1 thus gets corroborated regarding circumstances mentioned in his evidence. There are strong circumstances on record against the accused in the shape of seizure of tablets from the person of accused. Possession of those tablets has not been explained by the Accused. Evidence of Doctor Chavan supports the prosecution case that the tablets if administered would make the patient unconscious. The prosecution case is that the accused persons distributed biscuits to the fellow passengers who in turn after eating those biscuits, became unconscious. Accused persons then managed to take away articles belonging to those passengers. During the search some of the articles and cash amount are recovered from the accused person. Taking overall view of the matter, it is not possible to take a different view than the one taken

by the trial Court with regard to the charge of commission of the offence by the accused person punishable under section 328 r/w 34 and 379 r/w 34 respectively. Accordingly these appeals should fail. The same are dismissed.

3. Copy of this order be forwarded to the appellants/accused as these appeals were filed through jail.